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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*R. Russell  
civ Pers*

**FILE:** B-189002

**DATE:** February 8, 1978

**MATTER OF:** Delayed Promotion - Training Interrupted by Military Leave

**DIGEST:** Promotions conditioned upon the successful completion of training essential for satisfactory performance at the higher level are properly delayed until this requirement has been met even though the training period is extended by an intervening period of military leave authorized by 5 U.S.C. 6323. This provision of law does not effect a waiver of valid requirements for promotion.

The Department of the Navy, by letter of May 3, 1977, from the Director, Office of Civilian Personnel, requests a decision as to whether promotion may properly be delayed until the completion of a training program normally required for advancement when the training period is extended because it is interrupted by military leave authorized by section 6323 of title 5, United States Code, or whether that section effects a waiver of established training requirements for employees while on military leave. The question arises because a preference eligible in the apprentice program has challenged a delay of approximately 2 weeks in his promotion, resulting from his inability to complete his training until he had returned from military leave.

The Department indicates that it does not interpret section 6323 as requiring such a waiver and that it follows a policy of long standing that the primary requirement for promotion of employees in the apprentice program, as well as the promotion of other blue collar and white collar employees, is the successful completion of all elements of the prescribed training plan. Otherwise, in its view, employees might be promoted without receiving training that is essential for satisfactory job performance at the higher level. In many instances lack of training in a specific element could have serious consequences, such as the failure of a nuclear power plant or of a critical aircraft or missile component.

At the outset it should be noted that the general rule is that the granting of promotions is a discretionary matter primarily within the province of the administrative agency and employees have no vested right to be promoted at any specific time. Modifications

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of this rule have been recognized only where the agency has exercised its discretion by establishing or agreeing to a valid nondiscretionary policy providing that promotions will be granted when certain specified conditions have been met. See 54 Comp. Gen. 263 (1974) and cases cited therein. We assume that in the situation here involved there exists a valid commitment to promote as soon as prescribed training has been successfully completed and all other requirements for promotion have been met.

Briefly stated, the provisions of section 6323 are as follows: Subsection (a) provides that employees who are Reserves of the armed services or members of the National Guard are entitled to military leave, not in excess of 15 days in a calendar year, for active duty or field or coast defense training, without loss in pay, time, or performance, or efficiency rating. Subsection (b) which pertained to substitute employees in the postal field service, has been repealed and through some inadvertence the two remaining subsections have both been designated (c). The first subsection (c) provides that employees who are Reserves or members of the National Guard are entitled to military leave, not to exceed 22 workdays in a calendar year, for military service to aid in enforcing the law, without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance or efficiency ratings. The second subsection (c) provides that employees who are members of the National Guard of the District of Columbia are entitled to military leave for parades or encampments ordered or authorized under title 39, District of Columbia Code, without loss in pay or time.

The critical language here is "without loss of pay or in time or credit for time or service." Insofar as can be determined, these phrases have not been specifically defined or explained in the legislative history of section 6323 or that of the earlier enactments from which it is derived. However, in our view, the intent of this language is to insure that time spent on military leave will be counted as creditable service for such purposes as step increases, time-in-grade required by the Whitten Amendment (section 1310 of the Act of November 1, 1951, as amended, published in the notes following 5 U.S.C. 3101 (1970)), and retirement. We have found no suggestion and, in our view, it would be unreasonable to conclude that this language must be construed so as to require the promotion of employees who do not possess the necessary qualifications for satisfactory performance at the higher level.

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Accordingly, it is our opinion that promotions conditioned upon the successful completion of training essential for satisfactory performance at the higher level are properly delayed until this requirement has been met even though the period of training is extended because it is interrupted by military leave authorized by 5 U.S.C. 6323. In other words, this provision of law does not, in our view, effect a waiver of valid requirements for promotion.

*R. F. K. H.*  
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of the United States